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7
8 **BEFORE THE**
9 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

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11
12 HEARING IN THE MATTER OF
13 CALIFORNIA DEPARTMENT OF WATER
14 RESOURCES AND UNITED STATES
15 BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF DIVERSION
FOR CALIFORNIA WATERFIX

**PROTESTANT RESTORE THE DELTA'S
RESPONSE TO SAN LUIS DELTA
MENDOTA WATER AUTHORITY'S
OBJECTIONS TO PART 1B PARTIES'
CASES IN CHIEF AND JOINDERS**

1 **I. INTRODUCTION**

2 Protestant Restore the Delta (RTD) filed its case in chief on September 1, 2016 to bring
3 before the State Water Resources Control Board (Board) some of the myriad of environmental
4 justice concerns that many Delta residents have with respect to the Petition. Accordingly, much of
5 RTD’s testimony describes environmental justice issues throughout the Delta region and many of
6 their underlying aspects. RTD’s case in chief also includes testimony that responds directly to the
7 Board’s specific inquiries for this hearing, set forth in its October 30, 2015 Notice of Petition and
8 Hearing and subsequent orders. Each of RTD’s witness’s written testimony includes an explanation
9 of that witness’s competence to offer the testimony stated therein and contains verified facts based
10 on the witness’s personal knowledge.

11 Despite RTD’s testimony addressing the very issues this Board has identified as appropriate
12 for Part 1 of this hearing, San Luis Delta Mendota Water Authority (SLDMWA) joins the
13 Department of Water Resources and others in objecting to substantial portions of RTD’s witnesses’
14 testimony by asserting unfounded boilerplate allegations that the statements made by RTD’s
15 witnesses lack relevance or foundation, contain inadmissible hearsay, or state inadmissible
16 opinions.¹

17 The Board explicitly determined that Part 1 of this proceeding would include addressing
18 “human uses that extend beyond the strict definition of legal users of water,
19 including...environmental justice concerns.” (See California WaterFix Project Pre-hearing
20 Conference Ruling (Feb. 11, 2016) at p. 10.) The Board also clarified that testimony should focus
21 on issues pertaining to (1) whether the changes proposed in the Petition in effect initiate a new water
22 right; and (2) whether the proposed changes would cause injury to any municipal, industrial or
23 agricultural uses of water, including associated legal users of water. (See California WaterFix
24 Hearing – Ruling on Written Testimony Outside the Scope of Part 1 and other Procedural Matters
25 (October 7, 2016) at p. 2.) In accordance with the Board’s instructions, including its recent

26 _____
27 ¹ The Westlands Water District joined SLDMWA’s objections to Part 1B Parties’ Cases in Chief in
28 full. (See Joinder to Objections to Part 1B Parties’ Cases in Chief (Sept. 21, 2016).) These
responses apply equally to Westlands Water District’s joinder.

² RTD gave notice of its withdrawal of the testimony of these three witnesses in its September 30,

1 instruction to strike portions of the revised testimony of Tim Stroshane, issued on November 23,
2 2016, RTD revised its witness' testimony and withdrew the testimony of Gary Mulcahy, Roger
3 Mammon, and Xiuly Lo² and submissions related to these witnesses' testimony as outside the scope
4 of Part 1.

5 A number of SLDMWA's objections are rendered moot by RTD's withdrawal and revision
6 of its witness' testimony. For the reasons stated herein, SLDMWA's objections to RTD's
7 remaining testimony are meritless and unfounded and should be overruled.

8 **II. LEGAL STANDARDS**

9 This hearing is governed by Chapter 4.5 of the Administrative Procedure Act (Gov.
10 Code, § 11400 et seq.); Board regulations (Cal. Code Regs., tit. 23, §§ 648-648.8); sections 801 to
11 805 of the Evidence Code; and section 11513 of the Government Code. (Cal. Code Regs., tit. 23, §
12 648(b).) The Board is not required to conduct adjudicative hearings according to the rules of
13 evidence applicable in court proceedings. (Gov. Code, § 11513(c).) Instead, "[a]ny relevant
14 evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed
15 to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory
16 rule which might make improper the admission of evidence over objection in civil actions." (*Id.*)
17 "Hearsay evidence may be used for the purpose of supplementing or explaining other evidence...."
18 (Gov. Code § 11513(d).) The Board follows these relaxed standards because the Hearing Officers'
19 expertise in water issues justifies its ability to make both legal and factual determinations.

20 Moreover, RTD's testimony remains admissible even under the Evidence Code's more
21 stringent standards as discussed below.

22 **III. ARGUMENT**

23 SLDMWA's objections fall into three principal categories:

- 24 (1) Objections alleging that statements made in RTD's testimony are inadmissible opinions
25 regarding questions of law or lack adequate foundation;

26
27 ² RTD gave notice of its withdrawal of the testimony of these three witnesses in its September 30,
28 2016 Response to Evidentiary Objections Regarding Scope of Witness Testimony in Part 1B, and
clarified in its October 24, 2016 Notice Regarding Availability of Witnesses that it reserves the right
to resubmit all three witnesses' testimony in Part 2.

- 1 (2) Objections based on relevance; and
2 (3) Objections alleging that statements made in RTD’s testimony consist of inadmissible
3 hearsay.

4 Despite the fact that the Board is not required to conduct its adjudicative hearings according
5 to the rules of evidence applicable in court proceedings, RTD’s testimony meets the Evidence
6 Code’s requirements for conveying admissible, relevant opinion testimony in accordance with
7 Evidence Code sections 165, 710, 170, 702 and 800, and California Code of Civil Procedure section
8 2094.

9 With respect to any hearsay statements alleged to be contained in RTD’s written testimony, if
10 the Board determines that there are in fact such statements, the Board can consider them “for the
11 purpose of supplementing or explaining other evidence” and RTD’s witnesses may continue to rely
12 upon them for the same purpose. (Gov. Code § 11513(d).)

13 With respect to the specific objections made by SLDMWA, many of its objections are no
14 longer at issue as some portions of the testimony to which they object have already been stricken in
15 accordance with the Board’s rulings regarding the scope of Part 1. (California WaterFix Hearing –
16 Ruling on Written Testimony Outside the Scope of Part 1 and Other Procedural Matters (October 7,
17 2016) at p. 2, and California WaterFix Hearing – Ruling Concerning Testimony of California
18 Sportfishing Protection Alliance and Other Part 1B Parties (Nov. 23, 2016).) RTD lists these and
19 SLDMWA’s other evidentiary objections, along with RTD’s responses, below.

20 **A. Response to SLDMWA’s Objections to RTD-10 – Testimony of Tim Stroshane**

21 SLDMWA objects to portions of Tim Stroshane’s testimony that concern the relationship
22 between the Petition Facilitates and the Delta Reform Act, as well as project financing relating to the
23 Petition. The statements that are no longer at issue, pursuant to the Board’s October 6th, and
24 November 23rd Rulings regarding the Scope of Part 1B testimony are: RTD-10, at pp. 2:9-18, 3:21-
25 4:14; 21:1-24:1; 38:9-10. Accordingly, SLDMWA’s objections to the statements made in these
26 portions of Mr. Stroshane’s testimony do not need to be addressed.
27
28

1 SLDMA’s objection to RTD-10 at pp. 19:15-20:23, and more generally at pages 19-24, are
2 similarly now only partially at issue, as RTD-10 paragraph 65, on pp. 20:11-23, and paragraphs 65-
3 75 on pp. 19-24 have also been stricken pursuant to the same Rulings issued by the Board.

4 With respect to the remaining portions of Mr. Stroshane’s testimony, SLDMWA’s objections
5 alleging inadequate foundation or attacking the content of Ms. Stroshane’s statements on the basis
6 that they convey inadmissible legal opinion(s) or concern facts that are either irrelevant or outside of
7 his expertise are baseless.

8
9 **1. SLDMWA’s Objections Alleging That Mr. Stroshane’s Testimony
Consists of Improper Legal Opinion Are Misguided.**

10 SLDMWA objects to Mr. Stroshane’s testimony regarding the effect of “Water Right Order
11 2009-0061,” beginning at page 6 of his testimony. (SLDMWA Objections to Part 1B Parties’ Cases
12 in Chief (SLDMWA Objections) at p. 61.) This testimony responds directly to statements made by
13 Petitioner Department of Water Resources (DWR), which reference the same Water Right Order for
14 support. (See DWR-53 at p. 10 [Testimony of witness Maureen Sergent].) Specifically, DWR cites
15 Water Right Order 2009-0061 to support its claim that “the limited change requested in the []
16 Petition for Change support[s] a determination by the [Board] that the CWF Petition, will not, in
17 effect, initiate a new water right.” (*Ibid.*)

18 In response to DWR’s testimony and in protest to the Petition before the Board, Mr.
19 Stroshane explains that DWR’s argument that “the CWF Petition, will not, in effect, initiate a new
20 water right” is incorrect. (See RTD-10 at pp. 5-19.) His reference to the Order and his explanation
21 of the effect of Delta inflows from the Sacramento and San Joaquin Rivers are set forth in his
22 testimony to distinguish the facts before the Board as it considers DWR’s Petition from those that
23 were before it in issuing Water Right Order 2009-0061. (See *id.*) This testimony, therefore, relates
24 to RTD’s position that the Petition before the Board, unlike the change petition before it in the
25 “Santa Cruz Case,” does not merely deal with a change in point of diversion and point of intake;
26 rather, it initiates a new water *right*. Mr. Stroshane’s testimony regarding Water Right Order 2009-
27 0061 provides factual distinctions, as opposed to a legal conclusion, framed in relation to the
28 applicable standards and central questions before the Board as it considers the Petition. (See

1 California WaterFix Project Pre-hearing Conference Ruling (Feb. 11, 2016) at p. 19.) As such, Mr.
2 Stroshane’s testimony relating to Water Right Order 2009-0061 and distinguishing the facts
3 presented in the “Santa Cruz Case” from the facts before the Board here is admissible, relevant
4 testimony regarding his opinion as it pertains to DWR’s key arguments in support of its Petition.
5 SLMDWA’s attempt to characterize the testimony, at RTD-10, pp. 7:11-8:6, as “inadmissible”
6 opinion testimony regarding questions of law should be rejected.

7 SLDMWA similarly objects to statements made by Mr. Stroshane regarding the absence of
8 any description of Petition Facilities in existing beneficial use authorizations or water rights permits,
9 found in RTD-10, at pp. 9:9-13, and 11:13-12:26, on the basis that these convey inadmissible legal
10 opinions or are irrelevant. These objections are misguided attempts to deny RTD the ability to
11 support arguments made in its Protest of the Petition.

12 Mr. Stroshane’s testimony regarding existing water rights authorizations and beneficial use is
13 offered in response to DWR’s claims that a decision to grant the Petition will not initiate a new water
14 right. Part of DWR’s argument relies on its claim that the Petition Facilities require only a change in
15 existing authorizations provided through the State Water Project and Central Valley Project, which,
16 in turn, suggests that those projects have not been put to complete beneficial use in accordance with
17 water code requirements.

18 Mr. Stroshane is not a lawyer and does not purport to be a lawyer or to offer legal
19 conclusions. This is, however, a legal proceeding, in which the laws and regulations regarding
20 change petitions, water rights, and beneficial use are directly at issue and thus highly relevant.
21 Precluding Mr. Stroshane, or any other witness, from grounding testimony in the appropriate legal
22 framework would be senseless and highly prejudicial, as that would impede any party’s ability to
23 present a persuasive argument regarding the central issues in this proceeding.

24 SLDMWA’s claim that “there is no question regarding whether the petition facilities or
25 points of diversion are in the existing water rights” is wholly inaccurate, as the Board’s consideration
26 of whether the Petition Facilities are described and thereby contemplated in existing authorizing
27 legislation or existing water rights permits is intrinsically linked to its consideration of whether a
28 decision to grant the Petition would, in effect, initiate a new water right. (See Notice of Petition,

1 Public Hearing and Pre-Hearing Conference (October 30, 2015) p. 5.) Thus, SLDMWA’s objection
2 to Mr. Stroshane’s testimony describing the fact that the Petition Facilities are not found in enabling
3 legislation or in existing water rights permits, found in RTD-10, at pp., 9:9-13, 11:13-12:26 and
4 15:1-5 should also be overruled.

5 **2. SLDMWA’s Objections Based on Inadequate Foundation or Expertise**
6 **Are Baseless.**

7 SLDMWA objects to statements in Mr. Stroshane’s testimony (RTD-10, at pp. 8:14-22,
8 29:18-25, 30:16-36:18, 37:12-21, 37:23-38:2, and 38:7-41:2) raising issues about water quality and
9 modeling results as they relate to legal injury and the creation of a new water right. These objections
10 are merely further attempts to preclude Mr. Stroshane from stating his opinion(s) regarding the
11 potential range of effects that granting the Petition might have on existing water rights holders and
12 other users of water, including environmental justice communities.

13 While it is generally the case that witnesses may only testify as to matters they have
14 personally seen, heard, or know from their experience, the Evidence Code allows witnesses to offer
15 their opinions, so long as those opinions are rationally based on their perception and their opinion is
16 helpful to a clear understanding of the witness’s testimony. (See Evid. Code, § 800, subs. (a), (b).)
17 To testify before the Board, a witness need not be an expert. However, the opinions offered by
18 witnesses with experience in the field and whose opinion based on that experience rises to a level of
19 “expertise” can aid the Board in its consideration of technical factual and legal issues. To aid the
20 Board in this type of consideration, Mr. Stroshane provided a statement of qualifications, explaining
21 his lengthy experience as an analyst of California water policies and management, which underlies
22 his observations, interpretations, and understandings regarding the Petition before the Board. (See
23 RTD-1 [Tim Stroshane Qualifications.]) Mr. Stroshane’s statement of qualifications is offered as
24 foundational information in support of his testimony. SLDMWA objects to the opinions Mr.
25 Stroshane offers on the basis that he has failed to lay an adequate foundation for his opinions
26 because “there is no foundation establishing that Mr. Stroshane is . . . qualified to provide an expert
27 opinion regarding modeling, water quality, hydrology or hydrodynamics.” (SLDMWA Objections at
28 pp. 61, 62.)

1 The threshold for laying an adequate foundation for the purpose of providing opinion
2 testimony to aid the trier of fact is low. An adequate foundation for opinion testimony offered into
3 evidence is established by showing that the testifying witness or declarant has the capacity to
4 perceive the facts alleged and to recall and communicate their perceptions. (Evid. Code, §§ 170,
5 702.) Mr. Stroshane’s statement of qualifications documents his expertise and experience regarding
6 California water policy and management, and his testimony begins with a summary of his
7 qualifications in the area of water law, water rights, and the history of California water management.
8 (See RTD -1 [Tim Stroshane Qualifications].) SLMDWA offers no standard by which to measure a
9 witness’ “expertise” in the area of hydrodynamics, water quality, or otherwise, but objects to Mr.
10 Stroshane’s opinions regarding water quality issues and the effects that a change in water quality
11 might have on existing users of water. SLDMWA further objects to Mr. Stroshane’s opinions about
12 the modeling results before the Board and the creation of a new water right.

13 There is no requirement that Mr. Stroshane be a trained expert in modeling, hydrodynamics,
14 water quality, or hydrology to offer opinions related to these topics. Mr. Stroshane is well versed in
15 issues concerning water policy, water quality, and water rights, as described in his statement of
16 qualifications. He has provided an adequate foundation for his opinions relating to the Board’s
17 inquiry into whether the Petition would create a new water right, whether the Petition Facilities
18 would degrade water quality to an extent that would harm legal users of water, and whether the
19 modeling data provided to the Board in this proceeding accurately depicts the effects that Petition
20 Facilities would have on Delta water resources. SLDMWA’s objections to RTD-10, at pp. 8:14-22,
21 29:18-25, 30:16-36:18, 37:12-21, 37:23-38:2, and 38:7-41:2 should be denied.

22 **B. Response to SLDMWA’s Objections to RTD-20 – Testimony of Barbara**
23 **Barrigan-Parrilla**

24 SLMDWA asserts a blanket objection to nearly ten pages of Ms. Barrigan-Parrilla’s
25 testimony, which describes the “Threats to Environmental Justice Communities’ Beneficial Use
26 from Petition Facilities.” (See SLDMWA Objections at p. 63, and see RTD-20 at pp. 31-40.) This
27 objection is cursory and directly contravenes the Board’s clear instruction to the parties, that it would
28 consider in Part 1 the effect that granting the Petition would have on “human uses that extend

1 beyond the strict definition of legal users of water, including ...environmental justice concerns.”
2 (California WaterFix Project Pre-hearing Conference Ruling (Feb. 11, 2016) at p. 10.) As noted,
3 RTD has revised its testimony as instructed by the Board in two subsequent rulings on the scope of
4 Part 1B. SLDMWA’s attempt to portray Ms. Barrigan-Parrilla’s environmental justice evidence, as
5 set forth in her testimony, as inadmissible “hearsay” is a clear attempt to prevent the Board’s
6 consideration of these issues.

7 Hearsay evidence is not prohibited in proceedings before the Board and “may be used for the
8 purpose of supplementing or explaining other evidence....” (Gov. Code § 11513(d).) The Water
9 Board has deliberately expanded its consideration of legal injury to include the threats described in
10 Ms. Barrigan-Parrilla’s testimony. Because of this, and because the Board applies relaxed standards
11 with respect to its evidentiary determinations and has clearly defined the issues in this proceeding,
12 the Board should overrule SLMDWA’s objection to Ms. Barrigan-Parrilla’s environmental justice
13 testimony in RTD-20 at pp. 31-40.

14 **C. Response to SLDMWA’s Objections to RTD-30 – Testimony of Michael**
15 **Machado**

16 SLDMWA objects to Michael Machado’s testimony on the same grounds it asserts regarding
17 the Stroshane testimony. (See SLDMWA’s Objections at pp. 64-65.) With respect to foundation,
18 SLDMWA argues that Mr. Machado has failed to state an adequate foundation regarding his
19 description of proposals leading up to the filing of the Petition now before the Board, as well as his
20 description of the relationship between economic injury and injury to legal users of water and,
21 specifically, the relationship between the Delta Economic Sustainability Plan’s (DESP) goals and the
22 Petition before the Board. (SLDMWA’s Objections at pp. 64-65.)

23 As explained above, the Evidence Code sets a lenient threshold for laying an adequate
24 foundation for opinion testimony. Mr. Machado has submitted an extensive list of qualifications and
25 summarizes some of his qualifications at the outset of his written testimony. (See RTD-3 [Machado
26 Qualifications], and RTD-30 at p. 1.) Those qualifications include Mr. Machado’s two terms in the
27 California Senate and three years as the Executive Director of the Delta Protection Commission,
28 where he prepared and implemented the DESP. (See RTD-30 at p. 1.) He describes the relationship

1 between the DESP and the Petition in a section of his testimony titled “Relationship of the DESP to
2 the Change Petition.” (*Id.* a pp. 1-2.) Mr. Machado’s testimony regarding the impacts of salinity
3 changes in the South Delta as they relate to the Petition Facilities are based on his experience
4 preparing and implementing the DESP, as well as his review of documents and data pertaining to the
5 Petition before the Board. (RTD-30 at pp. 2, 6-7.)

6 Mr. Machado’s testimony pertaining to economic injury to agricultural users of water in the
7 South Delta is based on his experiences as a State Senator and in implementing the DESP. Mr.
8 Machado does not claim to offer a legal opinion regarding “what constitutes injury” to agricultural
9 users of water. However, as an experienced legislator, who represented South Delta residents, with
10 an extensive background in agribusiness and agricultural economics, Mr. Machado is perfectly
11 “qualified” to state his opinion, based on his experience, personal observation, and review of
12 numerous Petition documents, regarding the effect that granting the Petition would have on legal
13 users of water, specifically including agricultural users. SLDMWA’s objections to Mr. Machado’s
14 testimony at RTD-30, pp. 7:19-23, 9:27-10:2; 11:24-27; 12:1-6, 12:7-18, should be overruled.

15 **D. Response to SLDMWA’s Objections to RTD-40 – Testimony of Esperanza**
16 **Vielma**

17 SLDMWA objects to statements in the testimony of Esperanza Vielma that have been
18 stricken pursuant to the Board’s Order Regarding the Scope of Part 1 B, dated October 7, 2016.
19 These include statements at RTD-40 pp. 7:14-9:4. The remaining objections asserted by SLDMWA
20 are objections based on allegations that the testimony consists of irrelevant facts, hearsay, or
21 inadmissible opinions.

22 As explained in RTD’s Response to Evidentiary Objections Regarding the Scope of Witness
23 Testimony in Part 1B, to present the best evidence regarding the myriad environmental justice
24 concerns that many Delta residents have regarding the Petition, RTD painstakingly collected written
25 testimony from residents of Delta communities already experiencing the effects of diminished water
26 supplies and reduced water quality due to lack of adequate freshwater flows, salt water intrusion, and
27 pollution from agricultural runoff and other sources. (See RTD Response to Evidentiary Objections
28 Regarding the Scope of Witness Testimony in Part 1B (September 30, 2016) at p.1.) This includes

1 individuals like Messrs. Marsh and Sil who both spoke with Ms. Vielma as she prepared her
2 testimony. SLDMWA objects to Ms. Vielma’s testimony conveying the information from Mr.
3 Marsh concerning the loss to his business if the Petition facilities are granted. (SLDMWA
4 Objections at p. 65.) Mr. Marsh describes the loss of access to locally grown foods, upon which his
5 restaurant depends. (RTD-40 at 6.) Mr. Sils similarly describes the loss of business his restaurant
6 would suffer from increased odors and increased salinity that the Petition Facilities’ operation could
7 cause. (RTD-40 at pp. 6-7.)

8 These statements are relevant to the Board’s consideration of the impacts that granting the
9 Petition could have on small businesses in economically distressed communities like the City of
10 Stockton. This testimony is relevant to the Board’s consideration of environmental justice issues
11 related to the Petition. As owners of restaurants that would be affected by flow and water quality
12 changes caused by the Petition Facilities, Messrs. Marsh and Sil are also qualified to offer opinions
13 regarding the economic injury they could experience if the Petition is granted.

14 To the extent Ms. Vielma’s inclusion of these statements in her own testimony constitutes
15 hearsay, RTD reiterates its response to SLDMWA’s objections based on hearsay, above. The Board
16 may consider hearsay evidence to supplement or explain other evidence. (Gov. Code § 11513(d).)
17 SLDMWA’s objections to Ms. Vielma’s testimony at RTD-30 pp. 6:1-7, 6:25-7:7 should be
18 overruled.

19 **E. Response to SLDMWA’s Objections to RTD-60 – Testimony of Ixtel Reynoso**

20 SLDMWA objects to statements made in the testimony of Ixtel Reynoso on the basis that
21 they are inadmissible hearsay or consist of inadmissible lay opinion testimony without adequate
22 foundation. (SLDMWA Objections at p. 68.)

23 As noted above, the standard for laying an adequate foundation for offering opinion
24 testimony is lenient. Ms. Reynoso’s testimony concerns the loss of livelihood for agricultural
25 workers in the Delta if the Petition is approved and is offered in direct response to the Board’s
26 expansion of its consideration of legal injury to include environmental justice concerns.

27 A witness need not be a qualified expert in order to offer testimony before the Board.
28 Nonetheless, Ms. Reynoso explains her knowledge of the issues before the Board, describing her

1 upbringing in the Delta and the process by which she interviewed Clarksburg residents and water
2 users who would be directly affected by a decision granting the Petition. (RTD-40 at pp. 1-2.) Ms.
3 Reynoso thus provides an adequate foundation for her opinion regarding facts she has personally
4 perceived, and those which have been communicated to her, concerning the Petition's effects on
5 disadvantaged residents of the Clarksburg community. (See Evid. Code, §§ 170, 702.) But
6 SLDMWA objects to her testimony as lacking "foundation showing that Ms. Reynoso has personal
7 knowledge or expertise regarding Delta flows or regarding water quality or economics of the Delta."
8 (SLDMWA objections at p. 68.) Specifically, SLDMWA objects to Ms. Reynoso's opinion that the
9 Petition Facilities would affect the livelihood of environmental justice communities and their access
10 to safe and clean drinking water. (*Id.*) As a Clarksburg resident for a majority of her life, Ms.
11 Reynoso is fully competent to provide such testimony to the Board.

12 To the extent SLMDWA's objections allege that the some of the statements conveyed in Ms.
13 Reynoso's testimony are inadmissible hearsay, RTD reiterates its response to SLDMWA's hearsay
14 objections, above. The Board may consider hearsay evidence, at a minimum, to supplement or
15 explain other evidence. (Gov. Code § 11513(d).) SLDMWA's objections to Ms. Reynoso's
16 testimony at RTD-60 pp. 6:1-7, 6:25-7:7 should be overruled.

17 **IV. CONCLUSION**

18 SLDMWA refuses to acknowledge the Hearing Officers' clear ruling that environmental
19 justice concerns are to be heard in Part 1 and asserts baseless objections to RTD's evidence on
20 precisely that subject. SLDMWA also requests to have the Board exclude evidence that RTD offers
21 regarding the central question of whether granting the Petition would entail a new water right – an
22 issue that the Board's Hearing Notice expressly identifies as a topic to be addressed in Part 1. These
23 attempts to prevent RTD from offering evidence regarding the creation of a new water right and the
24 significant injuries that the grant of the Petition would cause to environmental justice communities
25 and other Delta residents must be rejected.

26 Respectfully submitted,

27 Dated: December 2, 2016

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Trent W. Orr

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1 **STATEMENT OF SERVICE**

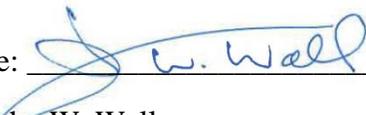
2 **CALIFORNIA WATERFIX PETITION HEARING**
3 **Department of Water Resources and U.S. Bureau of Reclamation (Petitioners)**

4 I hereby certify that I have this day submitted to the State Water Resources Control Board
5 and caused a true and correct copy of the following document(s):

6 **PROTESTANT RESTORE THE DELTA'S RESPONSE**
7 **TO SAN LUIS DELTA MENDOTA WATER AUTHORITY'S OBJECTIONS**
8 **TO PART 1B PARTIES' CASES IN CHIEF AND JOINDERS**

9 to be served by **Electronic Mail** (email) upon the parties listed in Table 1 of the **Current Service**
10 **List** for the California WaterFix Petition Hearing, dated November 15, 2016, posted by the State
11 Water Resources Control Board at [http://www.waterboards.ca.gov/waterrights/water_issues/](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)
12 [programs/bay_delta/california_waterfix/service_list.shtml](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix/service_list.shtml)

13 I certify that the foregoing is true and correct and that this document was executed on
14 December 2, 2016.

15 Signature:  _____

16 Name: John W. Wall

17 Title: Litigation Assistant

18 Party/Affiliation: Protestant, Restore the Delta

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